

VZCZCXRO2273  
PP RUEHCHI RUEHFK RUEHHM RUEHKSO RUEHPB  
DE RUEHJA #1332/01 1310830  
ZNY CCCCC ZZH  
P 110830Z MAY 07  
FM AMEMBASSY JAKARTA  
TO RUEHC/SECSTATE WASHDC PRIORITY 4683  
INFO RUEHZU/ASIAN PACIFIC ECONOMIC COOPERATION PRIORITY  
RUEHBJ/AMEMBASSY BEIJING PRIORITY 4082  
RUEHBY/AMEMBASSY CANBERRA PRIORITY 0744  
RUEHKO/AMEMBASSY TOKYO PRIORITY 0514  
RHMFISS/DEPT OF ENERGY WASHINGTON DC PRIORITY  
RUCPDOG/DEPT OF COMMERCE WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 001332

SIPDIS

SIPDIS

DEPT FOR EAP/MTS AND EEB/ESC/IEC  
DEPT PASS OPIC, EXIM, TDA  
DOE FOR CUTLER/PI-32 AND GILLESPIE/PI-32  
COMMERCE FOR 4430/BERLINGUETTE

E.O. 12958: DECL: 05/11/2017  
TAGS: [EMIN](#) [CASC](#) [EINV](#) [PREL](#) [ID](#)  
SUBJECT: NEWMONT CASE: GOI TO APPEAL ACQUITTAL

REF: JAKARTA 01148

Classified By: Classified by Resources Officer Kurt van der Walde, Reas  
on: 1.4 (d)

11. Summary: (C) The Government of Indonesia (GOI) filed a Motion of Appeal on May 7 seeking a reversal of the April 24 acquittal of American citizen Richard Ness and Newmont Mining Corp. subsidiary PT Newmont Minahasa Raya (PTNMR) on all criminal pollution and regulatory permit charges. The Manado district court overwhelmingly rejected all aspects of the GOI,s case. The prosecutor,s attempt to appeal seemingly contradicts Indonesian law, according to Newmont lawyers. Nonetheless, the prosecution has until May 21 to file the actual Memorandum of Appeal with the Supreme Court in Jakarta. Ness and Newmont lawyers are unsure of the significance of the prosecution,s latest motion or its chances of success in the high court, but feel a sense of trepidation to be outside the relatively straight forward legal arena in North Sulawesi. Given evidence of corruption and political interference in previous Supreme Court cases, Ness and Newmont believe the case could go either way despite the very strong district court ruling. End summary.

12. (SBU) North Sulawesi chief prosecutor Purwanta filed a Motion of Appeal on May 7 seeking a reversal of the April 24 acquittal of American citizen Richard Ness and PTNMR on all criminal pollution and regulatory permit charges. The Manado district court overwhelmingly rejected all aspects of the GOI,s case. The five judge panel found that the Buyat Bay mine site is not polluted and that Newmont complied with all regulations and permits during its eight years of operations from 1996 to 2004. Rick Ness told us on May 9 that the prosecution,s attempt to file an appeal is illegal according to Article 67 and Article 244 of Indonesia,s Code of Criminal Procedure (CCP). Both articles clearly state that the prosecution may not appeal a verdict that results in a complete acquittal. In addition, a 1982 Ministry of Justice decree plainly states: &If Article 244 CCP is read in conjunction with Article 67 CCP, then it is clear that with regard to a judgment of an acquittal...an appeal or examination in cassation cannot be requested.8 Newmont,s chief lawyer Luhut Pangaribuan said therefore that on a strictly legal basis the Supreme Court should immediately reject the prosecution,s motion.

13. (SBU) Newmont counsel provided us with the following relevant legal citations:

-- Article 67: A defendant or public prosecutor shall have the right to appeal against a decision of a court of first instance except against a decision of acquittal, a dismissal of all charges related to a matter of inappropriate application of law and a court decision under express proceeding.

-- Article 244: The defendant or the public prosecutor may file a request for an examination of an appeal to the Supreme Court against a decision on a criminal case rendered at the final instance by a court other than the Supreme Court, except with regard to an acquittal.

14. (C) Ness told us on May 9 that he and Newmont have no idea whether the Supreme Court will accept the Motion of Appeal. They say that the case is now in uncharted waters since a plain reading of Indonesian law clearly seems to indicate that the prosecution has no standing to appeal. Nonetheless, Ness said he is worried since the same Supreme Court allowed the criminal trial to proceed three years ago, despite the equally unequivocal legal requirement that the GOI pursue regulatory relief and civil remedies before resorting to criminal charges. Newmont executives tell us that they hope new Attorney General Hendarman Supandji will intervene to stop the appeal. They have not sought an appointment with him or his new team, but have been concentrating their outreach on officials in the office of the Economic Coordinating Minister, as well as mining and foreign ministry officials.

15. (C) Comment: Ness and Newmont clearly seem to have Indonesian law on their side in seeking to quash the prosecutor,s appeal. Nonetheless, they feel a sense of

JAKARTA 00001332 002 OF 002

trepidation to be outside the relatively straight forward legal arena in North Sulawesi where they felt they stood a reasonable chance to receive a fair hearing. By contrast, the Supreme Court does not have a strong record of jurisprudential performance, and has shown susceptibility to both political pressure and corruption. Given the high court,s poor legal reasoning that allowed the criminal case to proceed in the first place, Ness seems entirely justified in feeling uneasy to be back before them. We have made the point to the offices of Coordinating Ministers Widodo and Boediono that the GOI has little to gain--and much to lose--from appealing the district court,s unequivocal and stinging rejection of the GOI,s case. We will continue to press this line of argument with our GOI interlocutors. Although it is possible the GOI will file an intentionally weak appeal to reduce the likelihood that the Supreme Court would overturn the District Court ruling, the GOI,s unwillingness to take any public action to support Newmont raises troubling questions about the GOI,s commitment to attracting much needed major Western investors.  
HEFFERN